



**Republic v Mary alias Waingo alias Denno (Criminal Case E011 of 2024)  
[2024] KEHC 15226 (KLR) (Crim) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15226 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E011 OF 2024  
LN MUTENDE, J  
DECEMBER 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DENNIS SHIRAMBA MARY ALIAS WAINGO ALIAS DENNO ..... ACCUSED**

**RULING**

1. Dennis Shiramba Mary alias Waingo alias Denno, the accused, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* following allegations of having murdered Kennedy Alfayo Muthoka (Deceased) on 18<sup>th</sup> December, 2023 at Casanova area in Starehe, Nairobi County.
2. Having denied the information presented by the Director of Public Prosecutions, the accused seeks to be released on bond/bail pending trial.
3. The application is opposed by the State/Prosecutor. Through an affidavit deposited by No. 78812 P. C. Paul Nyoro, the Investigating Officer, who deposes that: the incident leading to the death of the deceased occurred in broad daylight and was witnessed by friends and neighbours among members of public that the accused is likely to interfere with if released on bail
4. That immediately after the incident the accused ran away from the scene and went to hide in Huruma Corner where he was arrested by the police on receiving intelligence report.
5. That prior to the incident the accused was on police radar for peddling bhang within Huruma and Eastleigh areas hence the apprehension that the accused is a flight risk.
6. No replying affidavit was filed by the defence. However, the the application was canvassed through oral submissions. It is urged that the accused was a minor at the time of the incident having been born on



- the 4<sup>th</sup> September, 2006. That his father died leaving him with the mother, hence after the incident he went to his mother's place at Huruma and did not flee as alleged.
7. The accused person's suitability for bond/bail was inquired into by the Probation and After Care Service. According to the mother of accused he was born on 13/4/2006 while the accused claims to have been born on 13/9/2006. Despite the discrepancy in months, when the offence occurred, he was 17 years old. The accused who was educated by his grandmother up to Standard 8 encountered serious challenges in life.
  8. The victim views were obtained from the deceased parents who are devastated. They strongly oppose grant of bail to the accused. They are apprehensive that the accused can easily interfere with witnesses who are his friends.
  9. The community in Huruma perceive the accused as a dangerous and violent person who peddles bhang and uses a 'rambo knife' weapon. This is reinforced by the argument of the Investigation Officer that the accused is a flight risk.
  10. It was therefore, the recommendation of the Probation Officer that the accused could be granted bail on stringent conditions to mitigate the risk of not turning up for trial as he lacks positive social factors.
  11. The right of an indicted person to be released on bail/bond is grounded on Article 49(1)(h) of the Constitution which enacts that:
    - (h) To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
  12. The accused person is presumed innocent until the contrary is proved (See Article 50(2) of the Constitution) this is why pretrial detention is frowned at.
  13. Bail in the instant case is vehemently opposed on two (2) important grounds: The accused being a flight risk; and, the likelihood of interfering with witnesses.
  14. The question to be grappled with is whether these amount to compelling reasons in the instant case requiring denial of bail. What constitutes compelling reasons, though not defined by the Constitution, was considered in Republic v Joktan Mayende & 4 others (2012) eKLR where it was stated that:

“...The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by the Constitution.”
  15. At the outset, when the accused was arraigned, it was appreciated that he was still a minor, a child in conflict with the law whereby denying him bail would not have been in his best interest.
  16. Section 223(1) of the Children Act provides that:

Institutionalization and detention of children in conflict with the law pending trial shall be used as a means of last resort, and detention pending trial shall, as far as is reasonably practicable, be replaced by alternative measures, such as placement with a family or in an educational setting or home.
  17. Murder is a serious offence. The punishment to be imposed in event of a conviction is facing up to death penalty. Indeed this could motivate the person prosecuted to escape. However, measures can be



put in place to discourage/prevent the accused from fleeing and in the result refusing to turn up for trial. This would also address the question of being a flight risk that has not been demonstrated.

18. An accused person may be denied liberty during trial if it is established that there is a likelihood of interfering with witnesses. The Bail and Bond Policy Guidelines provide for a scenario where the accused has been provided with Statements hence knows identities of the witnesses and the nature of the evidence they will adduce which may call for denial of bail.
19. The affidavit sworn by the Investigating Officer asserts the possibility of interference with witnesses, but, it does not state what the accused may have done that would suggest the possibility of the same happening.
20. On the question of friends who are not pointed out being influenced by the accused, it is a matter of assessing the importance the interest of the accused considering that he has just turned 18 years at the time.
21. In the result, having been a child offender at the time, Article 53 (2) stipulate that his best interest is paramount. Therefore. I find the State having not put forth convincing reasons that would require denial of bail in the instant case. In the result, I make orders thus:
  - a. The accused be and is hereby granted bond of Kenya Shillings Three hundred thousand (Ksh. 300,000/-) with a surety in a like sum.
  - (b) Upon release he will be barred from contacting his friends either directly or through proxy.
  - (c) In event that he contravenes the conditions set, the bond will be cancelled.
22. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 4<sup>TH</sup> DAY OF DECEMBER, 2024.**

**L. N. MUTENDE**

**JUDGE**

